

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RICHARD R. RILEY)	
Claimant)	
VS.)	
)	Docket No. 244,098
SONIC DRIVE-IN)	
Respondent)	
AND)	
)	
HARTFORD ACCIDENT & INDEMNITY)	
Insurance Carrier)	

ORDER

Claimant appeals the Order of Administrative Law Judge Bryce D. Benedict dated July 1, 1999. The Administrative Law Judge denied claimant's request for payment of medical expenses.

ISSUES

Whether the Administrative Law Judge exceeded his jurisdiction in refusing to order payment of claimant's medical expenses.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Administrative Law Judge on July 1, 1999. At that time, the Administrative Law Judge advised claimant's counsel:

[A]s I have told you several times before, I will not order payment of medical expenses at a preliminary hearing, unless you can show me some reason why those cannot wait until the regular hearing to be disposed of. So what is your argument on that point?

The Administrative Law Judge later denied claimant's request for payment of medical expenses "at this time," and then left the room, allowing claimant's testimony to be taken as a discovery deposition.

Claimant objects, alleging that the Administrative Law Judge has violated K.S.A. 1998 Supp. 44-534a, which requires the administrative law judge, at a preliminary hearing, "exercise such powers as are provided for the conduct of full hearings on claims."

Claimant argues the Administrative Law Judge failed to follow the statutory mandate requiring the exercise of such powers as provided for the conduct of a full hearing. The Administrative Law Judge, in this instance, did not finally deny claimant's request for payment of medical expenses, but instead refused to consider it until such time as the matter went to regular hearing, at which time a final decision would be made.

The Appeals Board must first consider whether it has jurisdiction to consider this appeal. Pursuant to K.S.A. 1998 Supp. 44-534a, the administrative law judge has the authority to grant or deny a claimant's request for medical treatment at a preliminary hearing pending a full hearing on the claim. The decision by the administrative law judge is not final, but is instead preliminary only.

K.S.A. 1997 Supp. 44-551 restricts review of preliminary orders by the Appeals Board unless it is alleged that the administrative law judge exceeded his jurisdiction in granting or denying the relief requested.

K.S.A. 1998 Supp. 44-534a lists the following disputed issues which shall be considered as jurisdictional and subject to review by the Appeals Board:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These shall be considered jurisdictional and subject to review by the Appeals Board.

In the instant case, the Administrative Law Judge denied claimant's request for payment of medical expenses, and such denial is within the Administrative Law Judge's jurisdiction. The Appeals Board does not have jurisdiction to consider this issue at this time, and claimant's appeal of the July 1, 1999, Order of Administrative Law Judge Bryce D. Benedict should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal by claimant from the July 1, 1999, Order of Administrative Law Judge Bryce D.

Benedict should be, and is hereby, dismissed, and the Order remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of August 1999.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
James M. McVay, Great Bend, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director